No. 487.

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Assignment and Brief of Plaintiff (Appellant).

SUPREME COURT OF THE UNITED STATES.

No. 187.

THOMAS SWAFFORD, PLAINTIFF IN ERROR.

vs.

W. A. TEMPLETON AND S. H. PEARCY.

(18,340.)

THOMAS SWAFFORD
vs.
A. TEMPLETON AND S. H. PEARCY.

In the Supreme Court of the United States.

STATEMENT.

In presenting this case, we shall first call attention to GENERAL Statutory and Constitutional provisions of nnessee regarding the laying out of civil districts and owing Justices of the Peace in the various Counties of State; this will be followed by such provisions affect- the elective franchise and also relating to class legis- on: we will conclude the statement with the case in id.

Counties, Civil Districts and Justices.

Prior to the Tennessee Constitution of 1834, the Coun- of the state were not divided into civil districts. The anization of the State and Counties partook somewhat he military form. For instance, the first constitution vided that there should be "Justices of the Peace ap- nted for each county, not exceeding two for each Cap- n's company, except for the company which includes County Town, which shall not exceed three, who shall d their offices during good behavior."

Const. 1796, Art. 5, Sec. 12.

This arrangement continued until changed by the nstitution of 1834, which was as follows:

"The different counties in this state shall be laid off, as the General Assem- may direct, into districts of convenient size, so that the whole number in each nty shall not be more than twenty five, or four for every hundred square s. There shall be two Justices of the Peace and one Constable elected in district by the **qualified voters** therein, except districts including county ns, which shall elect three Justices and two Constables."

Const. 1834, Art. 6, Sec. 15.

Pursuant to this latter provision, it was enacted by the FIRST SUCCEEDING LEGISLATURE:—

"That there shall be appointed by joint resolution of both branches of the General Assembly five suitable persons as Commissioners in each county in this State, a majority of whom shall be competent to act to lay off the respective counties into districts of convenient size, **regard being had both to territory and population,** for the purpose of electing Justices of the Peace and Constables therein. * * * That the Commissioners aforesaid * * * shall have full power and authority to lay off their counties into districts for the purpose aforesaid; and, in laying off the same, shall be governed by the following **ratio of population,** towit: Each county, containing 3,000 qualified voters or upwards, twenty-five districts; each county containing 2 500 voters and upwards, twenty districts; each county containing 2,000 voters and upwards, seventeen districts;" * * * and so on down "to counties containing less than 700 voters, which shall be laid off into eight districts."

Acts Tenn. 1835, Ch. 1, Secs. 1–3.

The aforesaid constitutional and legislative provisions were carried into subsequent constitutions and statutes, and are the constitution and law of Tennessee today.

Const. 1870, Art. 6, Sec. 15.
Code of 1858, Secs. 76–9.
Shannon's Code, Secs. 94–7.

Upon the adoption of the Constitution of 1834, and passing of the Acts of 1835, there were only sixty-seven counties in Tennessee. And by the Constitution of 1834, these counties then existing were to be laid off into civil districts "AS THE LEGISLATURE MAY DIRECT."

Under the Act of 1835, Chapter 1, Commissioners had been appointed, whose duty it was to lay off the sixty-seven counties aforesaid into civil districts, ACCORDING TO POPULATION, each county being given civil districts in proportion to its population. This was by GENERAL LAW and preserving exact equality among them all. Rhea county was one of the sixty-seven thus laid off. And it so remains as a sub-division of the state.

Code of 1858, Sec. 75.
Shannon's Code, Sec. 92a.
Acts 1807, Ch. 9.

At the time of adopting the Code of 1858, seventeen

new counties had been created, making the total number eighty-four.

Code 1858, Secs. 76-9.
Shannon's Code, Secs. 94-7.

The Commissioners, appointed to lay off the original sixty-seven counties, having performed their duties prior to the creation of the new counties, there was consequently no provision for dividing the seventeen new counties into districts. Therefore, by the Code of 1858 it was provided:

"The County Court of any County, two-thirds of the acting Justices of the Peace being present, may change the boundary of any civil district and make new districts, or re district a County entirely, when necessary, by means of Commissioners to be appointed by such Courtor otherwise."

Code 1858, Sec. 78.

It was further provided:

"The districts already laid off in the several counties of the State shall continue until altered in the manner pointed out by law."

Code 1858, Sec. 77.

"The manner pointed out by law" was by the County Courts, as shown by Section 78, just quoted above.

It was further provided that all counties should be divided into civil districts, ACCORDING TO POPULATION, thereby preserving perfect equality. These Statutory provisions continue to the present day.

Shannon's Code, Secs. 94-7.
Code 1858, Sec. 79.

A Justice of the Peace is a constitutional, judicial officer. The justices of the county, two elected from each civil district, except those including county towns, which were entitled to three, as before shown, compose the county courts of the various counties. This county court was created for each and every county in the State, and so exists to the present time.

Const. 1870, Art. 6, Sec. 1.
Code 1858, Secs. 127–8
Shannon's Code, Secs. 221–2.

These County Courts, composed of the various Justices

are the Probate courts of the state. They constitute the tax levying power, administer insolvent estates, have cognizance of guardianships, administrator's settlements, public roads, public schools, THE CHANGE OF DISTRICT LINES and possess many other functions, and cannot be abolished by Statute, being Constitutional courts.

Code 1858, Secs. 78, 488, 4,201.
Shannon's Code, Secs. 96, 648, 6,027.

"The County Court is one of the institutions of this State recognized in the Constitution, and the powers conferred by the Constitution upon the Justices of the Peace in their collective capacity are intended to be exercised in the County Court * * * and cannot be taken away from the Justices of the Peace by any special or local law, and conferred on local tribunals of particular counties."

Pope vs. Phifer, 3 Heis., 683.

Elections and Class Legisilation.

"Elections shall be free and equal, the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon a conviction by a jury of some infamous crime previously ascertained and declared by by law, and judgment thereon by a Court of competetent jurisdiction."

Const. 1870, Art. 1. Sec. 5.

"Every male person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein he may offer his vote for six months next preceding the day of election, shall be entitled to vote for members of the General Assembly * * * and there shall be no qualification attched to the right of suffrage, except that each voter shall give to the Judges of Election, where he offers to vote, satisfactory evidence that he has paid the poll taxes assessed against him for such preceding period as the Legislature shall prescribe, and at such time as may be prescribed by law."

Const. 1870, Art. 4, Sec. 1.

"In Tennessee, the elective franchise **is a right** which the law protects and enforces as jealously as it does property in chattles or lands. * * * The person who, under the Constitution and Laws of the State, is entitled to it, has a property in it which the law maintains and vindicates as vigorously as it does any right of any kind which men may have and enjoy.

"The rules of law, which guard against deprivation or injury to the rights of persons in corporeal properties, are alike and equally applicable to the elective franchise; and alike and equally guard persons invested with it against deprivation or injury to it. Persons invested with the elective franchise cannot be deprived of it otherwise than 'by due process of law,'"

State vs. Wm. Staten, 6 Cold. 233.

Prior to the passage of what are known as the Dortch and Registration Laws of Tennessee, the ballots to be voted at ALL ELECTIONS were to be of "plain white paper, three inches wide and seven inches long, with the name or names to be voted for plainly written or printed thereon."

Shannon's Code, Sec. 1259.
Code of 1858, Secs. 846–9.

In 1891 the Legislature passed what are known as the Dortch and Registration Laws, requiring the registration of voters "in all cities, towns and **civil districts** having a population of twenty-five hundred inhabitants or over that number, computed by the Federal Census of 1890, or that may hereafter have that number or over, computed by any subsequent Federal Census."

It was further provided with reference to **all elections** to be held in such districts, towns and cities that the ballots be printed and distributed at **public expense**; the names of candidates to be printed together, irrespective of party, the arrangement upon the ballot to be left to the **will** of the officer charged with the printing of the ballots; that these ballots shall be distribted by the officer holding the election; that voting booths, shelves, etc., shall be erected at public expense at the various polling places, subject to the statutory provisions aforesaid; that every voter shall place a cross (x) opposite the name of the candidate of his choice on the ballot given him, and shall then fold the ballot in a peculiar manner, so as to expose certain words and names on the ballot and so as not to expose certain other names thereon, and deliver same to the election officer.

Shannon's Code, Secs. 1248–9, 1245, 1238, 1231, 1189.

A retinue of election Registrars, Judges, Clerks and other officers is provided for, who are to be paid at public expense in such cases.

Shannon's Code, Secs. 1189, 1192–4. 1197, 1201, 1208, 1217–18.

The expense incident to erecting booths, printing ballots, registration books, paying registrars, etc., IS CONSIDERABLE GREATER where elections are held under the Dortch and Registration Laws, and is borne by the tax payers out of the County Treasury of the various Counties in which such elections are held.

Shannon's Code, Secs, 1208, 1231.
Record p. 5.

Also a pernon who cannot read and write, thus enabling him to properly mark and with technical discrimition properly fold his ballot, cannot vote the ballot contemplated, known as the Dortch Law ballot. and unless physically disabled is allowed no assistance.

Shannon's Code, Secs. 1248–9, 1255.

By the Tennessee Constitution of 1870. it is previded:

"The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general law of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities or exemptions other than such as may be by the same law extended to any member of the community who may be able to bring himself within the provisions of such law."

Const. 1870, Art. 11, Sec. 8.

'No man * * * man shall be in any manner deprived of his life, libert, or property but by the judgment of his peers or the law of the land."

State Const. Art. 1, Sec. 8.

"Unnrtural, arbitrary and capricious" legislation is not the 'Law of the Land." "Law of the Lrnd means a law which embraces all persons who are or may come into like situation and circumstances."

89th Tenn. 541–2.

THE PRESENT CASE.

By Chapter 13 Acts 1897, a partisan measure, the power to hold and certify elections and appoint Judges was taken from the Sheriffs and County Courts of a certain class of Counties in the State, including Rhe (all the coutties except those above 70,000 population) and placed in the hands of three Election Commissioners in each County. The Governor was given power to appoint these Commissioners. A majority of the Election Commissioners, so appointed, was given powet to name the Election Judges and officers, for the purpose of holding elections of all kinds.

The defendants were a majority of the Judges named by the Election Commissioners for the purpose of holding the November, 1900, election, and were in sympathy with the measure under which they were acting, rnd the other legislation presently to be referred to.

Record, p. 5.

In 1899 Rhea County had fifteen civil districts, it having been divided into districts by Commissioners, according to the General Law, having reference to population and the presvation of equality.

The County was entitled, by reason of its fifteen civil districts, to a County Court composed of thirty-one Justices and possessing, among other things, power to change, alter or modify the district lines of the County. This was not true of Rhea County only, but of **every cther County** in the State.

Shannon's Code, Secs. 94–7.
Record, p. 4.

At that tin e there was neither a town or civil district in the County of Rhea of 2,500 population, and the Dortch Law did not apply to any portion of Rhea County, and all elections were held independent thereof in the inexpensive manner usual in sparsely populated territory, and the vo-

manner usual in sparsely populated territory, and the voter was not required to mark or read his ballot, and could obtain assistance in selecting the ballot he desired to vote.

Record, pp. 4–5.

With apparently no reason therefor, but arbitrarily, it would seem (and the declaration avers for purely partisan purposes) the Legislature of Tennessee in 1899 singled out Rhea County alone from the other ninety-five Counties in the State, and proceeded to enact that it (Rhea Co.) should be divided into four civil districts only, thus reducing the representation of its citizens in its County Court from thirty-one to nine members, and provided that the County Court of Rhea County should not have power to change the lines of the Fourth Civil District in Rhea County, as laid out by the Legislature, but that the lines of said Fourth District should remain as laid out by the Legislature until changed by the Legislature itself. The County Court was left free to change the other three districts.

Acts 1899, Chapter 163, Sec. 2.
Record, pp. 3–4.

By the passage of Chapter 163 Acts 1899 aforesaid three or more of the original fifteen districts were massed into each one of the Legislative Districts and, as a result, the Third and Fourth Legislative districts were made of more than 2,500 population each, being some ten miles in width and eighteen miles in length. By this method the Dortch Law was applied to these two Legislative districts, and the voters therein would consequently be required to vote the Dortch Law ballot, as previously explained.

The plaintiff resided in the Tenth Civil District of the County, as existing prior to the passage of Chapter 163 aforesaid, which territory was included in the Third District as laid out by said Act, was an illiterate, white, tax-paying citizen, duly qualified to vote under the Laws and Constitution of the United States and of Tennessee, and had been so for a long number of years, and could have vo-

ted the ballot prescribed by law in all territory throughout the State, except that to which the Dortch Law was applicable. Because of his inability to read and write, he could not after dilligent effort mark the Dortch Law ballot and fold it with the technical nicety required. Consequently if Chapter 163 aforesaid was upheld and enforced plaintiff would be disfranchised.

Record, pp. 2–6-

The declaration alleges that plaintiff was a tax payer, and that expenses incident to holding Dortch Law elections were greater than if held independent of the Dortch Law; that such expenses were paid from the County Treasury and plaintiff with other taxpayers was required to bear this increased burden.

That "there were various other Counties in and throughout the State of Tennessee, substantially situated as Rhea County, with substantially the same numerical population, area and wealth, social and educational attainments, and **in all other material respects** similar to the population of Rhea County. No legislation whatever, similar to Chapter 163, was enacted with reference to the other Counties, similarly situated and circumstanced as Rhea."

That the County Court of Rhea County ignored Chapter 163, and proceeded to re-establish the fifteen civil districts in the County, as they existed prior to the passage of Chapter 163; that the Federal Census Bureau and the Department of the Interior had declined to recognize the action of the Legislature, but had recognized fifteen civil districts as existing in the County, and taken the census accordingly; that the Legislative Enactment aforesaid was class, vicious and arbitrary legislation, violative of that portion of the Fourteenth Amendment to the Federal Constitution prohibiting the denial by a State to any person within its jurisdiction "the equal protection of the laws," and also of that clause of the State Constitution previously quoted, prohibiting "class legislation."

That plaintiff presented himself at said election, and tendered a ballot, complying with legal requirements in Tennessee in territory not regulated by the Dortch Law, and demanded the right to vote the same, and made known to the defendants (a majority of the Election Judges) each and all the aforesaid facts, his contention with reference thereto and his reasons therefor, and was then and there by the defendants, "willfully, deliberately, wrongfully and illegally" deprived of his right to vote for a Congressman in the Fourth Congressional District, and for Presidential Electors, the defendants insisting that under Chapter 163 aforesaid, making the Third Legislative District of more than 2,500 population, plaintiff was required to vote a Dortch Law ballot or not vote at all; while plaintiff contended he was not required to vote a Dortch Law ballot, because Chapter 163 was unconstitutional and viod, being in violation of both State and Federal Constitutions; but, if it was not, then that the County Court of Rhea County had the right to re-district the County as to all territory except that comprised in the Fourth Legislative District, and, having re-districted the territory in which plaintiff resided, (the Third Legislative District) it was no longer under the Dortch Law. Plaintiff therefore sued in the Circuit Court, Eastern District of Tennesse, for Two Thousand Dollars damages.

Record, pp. 2–7.

The defendants demurred becaused it was not alleged that they acted maliciously, and in effect insiting on the legality of Chaprer 163 aforesaid. The demurrer was sustained, being construed by the Court as presenting the ground that "no Federal question was involved, and the Court therefore without juricdiction." The Court, in addition, of its own motion, held that no Federal question was presented, and accordingly dismissed the suit, "the dismissal being solely on the want of jurisdiction."

Record, pp. 7–10.

The Judge also certified "that the order of dismissal was based solely on the ground that no Federal question was involved, and that the declaration disclosed the infraction of no right arising under or out of the Federal Laws or Constitution."

A writ of error was allowed (record 10–11), the plaintiff having filed an assignment of the following five errors to the action of the court.

Record, pp. 12–13.

ERRORS.

(1) "**The Court erred in sustaining the demurrer of the defendants.**

(2) **The Court erred in dismissing plaintiff's suit.**

(3) **The Court erred in conceiving that no Federal question was involved.**

(4) **The Court erred in conceiving that it was without jurisdiction or power to entertain the suit.**

(5) **The Court erred in dismissing the suit of its own motion.**"

ARGUMENT AND BRIEF.

The above assignment raises practically one question, namely: Does the declaration present a federal question? We think so. If correct as to this the cause must be remanded.

"The right to vote for members of the Congress of the United States has its foundation in the Constitution of the United States."

Wiley vs Sinkler, 179 U. S., 58.
Ex parte Yarbrough, 110 U. S., 651.

The elective franchise in Tennessee is a **property right** and is protected and enforced as other rights, and a person once invested with it "can only be depriyed of it by 'due process of law.' "

The State vs. Wm. Staten, 46 Tenn., 233. (6 Cold.)

The declaration in substance avers the plaintiff was deprived of this constitutional right otherwise than by "due process of law," and we think states clearly a case of federal jurisdiction. But regardless of whether the elective franchise be "property," a voter cannot be deprived of it by "arbitrary class legislation;" and, being a privilege given by the Federal Constitution, any abridgement or encroachment thereon by State legislation must be constitutional from both a State and Federal standpoint.

Now, that the elective franchise in Tennessee is protected from class legislation and can only be abridged by general legislation applicable alike to all territory throughout the State of the same class or character, does not admit of doubt. It was only because of the Dortch Law being general that it was upheld.

Shannon's Code, Secs. 1189, 1231.
The State vs. Wm. Staten, 46 Tenn., 233. (6 Cold.)
Cooke vs. State, 90 Tenn., 407.
Sec. 3, Ch. 13, Acts of 1897.

It is equally clear that Chapter 163 Acts 1899, dealing alone with Rhea County and massing together three

or more of the original civil districts into one extensive, sparsely settled district, while there were various other Counties throughout the State of a similar class in "all material respects" to Rhea, not legislated upon, is arbitrary, vicious and class legislation.

This especially so when we reflect that since the admission of Tennessee as a State, the civil districts of her counties throughout the State had been moulded and existed upon the theory of equality in burden of taxation, equality of representation in the County Courts, which were the respective miniature legislative bodies of the various counties, and entrusted with the tax-levying power therein. Each of these miniature legislatures was composed of Justices of the Peace coming from civil districts laid off, having reference to ratio of population, as before shown.

The County Courts thus created, representation therein and the tax-levying and other functions thereof, have been preserved by the Constitution, Laws and Decisions of Tennessee since its statehood. (3 Heisk.)

Pope vs. Phifer, 59 Tenn., 683.

The counties had been divided into civil districts, originally, in the same manner, and the districts laid off according to population; they were given equal representation in the County Courts; these Courts, throughout the State, were entrusted with the changing of district lines, creation of new civil districts, and given the same general power with reference to these matters. Therefore, when the Dortch Law was passed, applying to all counties, towns and civil districts of a certain class or population, it was properly construed as general and not special legislation, and, consequently, was upheld.

Cooke vs. State, 90 Tenn., 407.

But, manifestly, it would not have been upheld if one or more counties of the State had been singled out and the Dortch Law applied to them, without reference to class; this because the application of the Dortch Law increased the expense of County government, the cost of holding

elections, and practically deprived illiterate persons of the elective franchise, which, in Tennessee, is a "right protected by law."

Pope vs. Phifer, 59 Tenn., 683, (3 Heisk.)
State vs. State, 46 Tenn., 233. (6 Cold.)
R. R. vs. Ellis, 165 U. S., 154–6.

The Circuit Judge was of the opinion that no federal question was presented, because the plaintiff did "not content himself with the averment that he was wrongfully, maliciously or illegally deprived of the right to vote in a national election," so as to bring himself within the ruling in Wiley vs. Sinkler, but that he went further and based his action on the supposed invalidity of Chapter 163 Acts of Tennessee 1889, which enactment, if invalid at all, was because of its intringement of that portion of the Constitution of Tennessee against class legislation. He thought plaintiff's action could be prosecuted, if at all, "not because of any rights secured to him by the Constitution of the United States, but on account of rights secured to him by the Constitution of the State, namely, protection against special or class legislation."

Record, pp. 8–9.

As before stated, we insist that when plaintiff was deprived of the **right** to vote it was a deprivation of a "right secured to him by the Constitution of the United States," and therefore a federal question was presented and the Circuit Court below did have jurisdiction to inquire into plaintiff's case and ascertain whether plaintiff was deprived of this right legally or illegally; and the action of the Circuit Judge in refusing to so inquire and ascertain was erroneous; the mere fact that the State Courts had jurisdiction also did not deprive the United States Circuit Court of jurisdiction. The jurisdiction of the two Courts was concurrent. We urge this as conclusive of the case here presented, and insist that the case must be remanded.

Wiley vs. Sinkler, 179 U. S., 58.

But, if mistaken, and if it be true, as the Circuit Judge conceived, that the declaration must not only state a case showing the plaintiff deprived of his right given by the Federal Constitution to vote for a member of Congress, but that we must go further and show that the enactment, by virtue of which he was deprived of this right, was illegal, because in violation of the United States Constitution as well, we think the declaration states such a case.

We think further that the Circuit Judge was manifestly wrong when he conceived it was only the Constitution of Tennessee that protected against "special or class legislation," and impliedly held that the Federal Constitution did not afford such protection.

Record, p. 9.

We insist the Federal Constitution affords equally as strong protection against class legislation as does the State Constitution, and, in fact, Article 11, Section 8 of the State Constitution is by the Courts of Tennessee given substantially the same construction and effect as is the Fourteenth Amendment to the Federal Constitution by this Court; and, if the State Constitution afforded plaintiff protection against the Statute in question as class legisla tion, then the Federal Constitution likewise did so, and the Circuit Judge was therefore wrong, from this point of view.

Pope vs. Phifer, 59 Tenn., 683. (8 Heish.)
Stratten vs. Morris, 89 Tenn., 541.
Henley vs. The State, 98 Tenn., 698.
Sutton vs. The State, 96 Tenn., 710.
R. R. vs. Ellis, 165 U. S., 154-6.
Wagoner vs. Bank, 170 U. S., 294.

The County Courts of the various counties are the representatives of the citizens of the various counties, and, moreover, are **corporations.** Being corporations, they were entitled to **equal protection** before the law, just the same as citizens, and, in as much as these corporations (the County Courts) in all other counties in the State were left free to change, alter and modify district lines and create

new districts in their counties, a right which all counties had been given and exercised for more than fifty years, it was arbitrary and class legislation to single out Rhea County and prohibit its County Court from doing so.

"Every County is a corporation, and the Justices in the County Court assembled are the representatives of the County and authorized to act for it."

Const., Art. 10, Sec. 4.
Const., Art. 2, Sec. 29.

Not only was this a discrimination either in favor of or against Rhea County, through its corporate representative, the County Court, with respect to the **other Counties** in the State of the **same class**, of which the declaration avers there were many; but it was a discrimination either in favor of or against the citizens of the Fourth Civil District of Rhea County, as laid out by the Legislature, with reference to those of the other three districts as laid out by said legislative enactment. The County Court was left free to change the lines as to the other three districts, but forbidden as to the Fourth District.

Chapter 163 Acts of 1899.

By this Act of 1899 increased tax burdens were imposed; the other counties and citizens of the same class in the State except as to Rhea were not affected; the Civil Districts of Rhea County were made large and unwieldy and of "inconvenient size" for police protection and otherwise in violation of a clause of the State Constitution requiring them to be of "convenient size;" plaintiff and other illiterate persons were deprived of a "right protected by law" in Tennessee just as certainly and effectually as if it had been enacted in so many words that they should not be allowed to vote and this all for partisan purposes, to make the Third and Fourth Legislative Districts of 2,500 population so as to apply the Dortch Law.

Record, pp. 4–6.
State Const., Art. 6, Sec. 15.
The State vs. Staten, 46 Tenn., 233. (6 Cold.)

While all reasonable presumptions will be indulged in favor of the action of the legislative branch of the government, andthe Courts will give great weight to classifications adopted by the legislature in enacting class legislation, yet the courts will not abdicate their functions in deference to the legislature; there is no reason here disclosed for this extraordinary enactment, while the declaration avers such facts as show it to be clearly a **special law** singling out Rhea County from "a number of other counties of the same class and similar in all material respects."

To indulge a presumption in the face of the declaration "to the extent of holding there must be some undisclosed or unknown reason" for this enactment is indeed "to make the protecting clauses of the Fourteenth Amendment a mere rope of sand in no manner restraining State action."

R. R. vs. Ellis, 165.U. S., 156–6.

We think then Chapter 163 Acts 1899, applying only to Rhea County, leaving, as the declaration avers, various other similar Counties unaffected; increasing the tax burdens of the citizens of Rhea County; decreasing the representation of Rhea County's citizens in her County Court; curtailing the powers of her County Court, which, by her Constitution, is a corporation; and arbitrarily ignoring the Constitutional provisions, Statutes and established precedents of more than fifty years, simply for the purpose of making one or more districts of Rhea County of 2,500 population, and thus imposing upon her citizens the increased expense of elections and County government, before pointed out, and upon the citizens of one or more of her civil districts the requirements incident to voting under the Dortch Law, while the other districts were not thus affected, is the most vicious form of arbitrary and class legislation from both a State and Federal standpoint.

R. R: vs. Ellis, 165 U. S., 154–6.
Stratton vs. Morris, 89 Tenn., 541.
The State vs. Staten, 46 Tenn., 233. (6 Cold.)
Pope vs. Phifer, 59 Tenn., 683. (3 Heisk.)

To summarize, we submit when the declaration averred that plaintiff was deprived of the elective franchise, a right in Tennessee under the Staten case, which has its origin in the Federal Constitution, as held in Wiley vs. Sinkler, 179 U. S., 58, and that such denial was the result of the willful, deliberate, wrongful and illegal action of the defendants, that it stated a case of which the Circuit Court had jurisdiction.

Assume, for argument's sake, that Chapter 163 Acts 1899 of Tennessee was an intringement only of the State Constitution, and not that of the United States, can it be said that such invalid enactment would excuse the defendants for depriving plaintiff of any right that he had, either State or Federal? Suppose it was any other property or right belonging to plaintiff that was infringed; suppose this litigation were in the State Court; his Honor, the Circuit Judge, impliedly held that if Chapter 163 aforesaid was invalid plaintiff had a cause of action in the State Courts of Tennessee (Record, 9).

An unconstitutional law is no law; is practically a nullity, and will not authorize the withholding of the elective franchise.

Lynn vs. Polk. 76 Tenn., 130–1. (8 Lea)
Cooley's Const. Lim. (5th Ed.) 224.
The State vs. Staten, 46 Tenn., 233. (6 Cold.)

Now, if plaintiff have a cause of action in the State Courts, as intimated by the Circuit Judge, it is because he has been **deprived of a Federal right or privilege**, springing out of the **Federal Constitution**, and which emanates from no other source; consequently, the Circuit Court did have jurisdiction and should entertain this suit for the purpose of determining whether such denial was warranted. And we think, whether Chapter 163 aforesaid be constitutional from either a State or Federal standpoint, it matters not; the plaintiff has been deprived of a right by the defendants, "knowingly, willfully, deliberately and wrongfully," acting under an unconstitutional law. His

right had its origin in the Federal Constitution. An unconstitutional law is no law and is a nullity, and there was therefore no warrant for depriving plaintiff of this right, and it can make no difference that Chapter 163 did not specially infringe the Federal Constitution; if it infringed the State Constitution, it was no protection to defendants.

Wiley vs. Sinkler, 179 U. S., 58.
Lynn vs. Polk, 76 Tenn., 130–1. (8 Lea)
Cooley's Const. Lim. (5th Ed.) p. 224.

But Chapter 163 Acts of Tennessee 1899 is unconstitutional and in violation, not only of the Tennessee Constitution, but of the Fourteenth Amendment to the Federal Constitution, because class legislation of the most vicious type. And, even in this view, his Honor, the Circuit Judge, was in error and the cause should be remanded.

R. R. vs. Ellis, 165 U. S., 154–6.
14th Amd. to U. S. Constitution.
Henley vs. The State, 98 Tenn., 698.
Wagoner vs. Bank, 170 U. S,, 294.

Respectfully submitted,

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Attorney for Plaintiff.